



IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

CRM-M-52675-2023  
Reserved on 20.02.2025  
Pronounced on: 19.05.2025

ANUJ SHARMA

... Petitioner

Versus

RAVINDER KUMAR

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Kashav Chadha, Advocate for  
Mr. Rahul Bhargava, Advocate for the petitioner.

None for the respondent.

\*\*\*\*\*

**SANJIV BERRY, J. (ORAL)**

The instant petition has been preferred by the petitioner under Section 482 of the Code of Criminal Procedure seeking quashing of complaint case N.I.ACT-40-2016, dated 05.02.2016, titled as "*Ravinder vs. M.S. Allianz Polymer India Ltd*" (Annexure P-2) whereby petitioner has been summoned for commission of offence punishable under Section 138 of the Negotiable Instruments Act, vide order dated 25.07.2016 (Annexure P-3), passed by learned Magistrate, First Class, Sohna, Gurgaon, and all other subsequent proceedings arising therefrom.

2. In nutshell, the brief facts of the case are that a complaint under Section 138 of the Negotiable Instrument Act (hereinafter referred to as the 'N.I. Act' in short) has been filed before learned Magistrate, First Class,



Sohna, Gurgaon, stating that respondent No.1 is partnership firm and respondent No.2 to 4 were the managing partner, the respondents in dire need took a loan of ₹30 lakhs from the complainant on 23.08.2013 and assured that they will return the said loan after short span of time. After lapse of considerable time, the complainant approached the respondent No.3 and 4 to repay the loan and in discharge of their liability respondent No.3 and 4 issued a cheque bearing No.428977 dated 06.10.2015 amounting to ₹30 lakhs drawn at Indian Bank Branch at Dehradun, Uttaranchal. The aforesaid cheque was presented and the same was returned with remarks "FUNDS INSUFFICIENT". Complainant contacted the petitioner and informed him about dishonour of the cheque and assured him that due to some mistake it was dishonoured and advised him to again present the same cheque. The complainant again approached the bank and the bank returned the cheque on 11.12.2015 with same endorsement "FUNDS INSUFFICIENT". The complainant again informed the accused but they did not pay any heed. Hence the complainant filed complaint No. NIACT-40-2016, dated 05.02.2016, titled as "*Ravinder vs. M.S. Allianz Polymer India Ltd*" (Annexure P-2) and vide order dated 25.07.2016 (Annexure P-3), passed by learned Magistrate, First Class, Sohna, Gurgaon, summoned the accused/petitioner. Aggrieved by the same, petitioner, filed the present quashing petition.

3. It is *inter alia* contended by learned counsel for the petitioner that the petitioner is innocent and having no concern whatsoever with the allegations levelled in the complaint Annexure-P2 but has been falsely roped in and has been wrongly summoned by the learned Magistrate without



applying judicious mind vide the impugned order dated 25.07.2016. He contends that the impugned cheque (Annexure P-5) was allegedly issued by M/s Alliance Polymer (India) and signed by its partners accused No.3 and 4 namely Sanoj Sharma and Raj Kumar Sharma. He has referred to the partnership deed of M/s Alliance Polymer (India) dated 03.04.2014 (Annexure P-4) to say that only accused No.3 and 4 are partner there of and the petitioner is neither the partner nor has any concern with the said firm and he has been wrongly been dragged in the present litigation without having any concern with the firm or with the issuance of the alleged cheque. He has referred to the judgment of Hon'ble Supreme Court in **Ashok Shewakramani & Ors s. State of Andhra Pradesh & Anr, Law Finder Doc ID # 2284880 and Mrs. Aparna A. Shah vs. M/s Sheth Developers Pvt. Ltd. and another, Law Finder Doc ID # 461385** and submits that as the petitioner has no concern with either the firm accused No.1 nor is he partner thereof, nor even signatory of the cheque in question so continuation of the proceedings against him on the basis of aforesaid summoning order is abuse of process of law. As such, prayed for quashing thereof, qua the petitioner.

4. Notice of the petition was given to the respondents but none has come forward to contest the petition despite being duly served.

5. I have heard submissions made by learned counsel for the petitioner and perused the record.

6. Considering the submissions made by the learned counsel for the petitioner and in the light of the record placed on the paper book, it transpires that the respondent had filed the complaint Annexure P-2 titled as "*Ravinder vs. M.S. Allianz Polymer India Ltd*" N.I.ACT-40-2016, dated



05.02.2016 in the Court of Judicial Magistrate First Class Sohna under Section 138, 142 of the Negotiable Instrument Act on account of dishonour of the cheque (Annexure P-5) dated 06.10.2015.

7. On the basis of preliminary evidence so adduced the learned Magistrate vide impugned order dated 25.07.2016 summoned the petitioner and the other co-accused to face the trial for having committed offence under Section 138 of the Negotiable Instrument Act.

8. The perusal of record would reveal that the copy of the partnership deed of the firm M/s Alliance Polymer (India) dated 03.04.2014 (Annexure P-4) has been placed on record by the petitioner which clearly shows that it is between accused No.3 Sanoj Sharma and accused No.4 Raj Kumar as partners, the name of the petitioner nowhere figures therein as partner of the said firm.

9. Further perusal of the cheque in question (Annexure P-5) would also reveal that it is issued under the signatures of accused No.3 and 4 being partners of the said firm, even the petitioner is not signatory thereof.

10. It has been held by Hon'ble Apex Court in **Ashok Shewakramani's case (supra)** that under Section 141 of the Negotiable Instruments Act, 1881, a person will become vicariously liable when a company is accused of the offence under Section 138 (Dishonour of cheque for insufficiency of funds) of the Act, only if such a person was "incharge of" and was "responsible to the company for the conduct of the business of the company" at the time the offence was committed. The Hon'ble Apex Court has further clarified that Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it come to a penal



provision. The vicarious liability is attracted when the ingredients of sub-section 1 of Section 141 are satisfied.

11. It has been laid by Hon'ble Apex Court in *Mrs. Aparna A. Shah's case (supra)* if the cheque in question is drawn from joint account and is dishonoured then it is the only the drawer of the cheque who can made an accused in any proceedings arising out of Section 138 of the Negotiable Instrument Act.

12. Applying the principles laid down in the aforesaid judgments coupled with the provisions laid down under Section 138 and 141 of the Negotiable Instrument Act, it transpires that vicarious liability of the partner in the cheque issued by the company would only be attracted when the ingredients of Section 141 of the Negotiable Instruments Act has been duly satisfied.

13. Coming to the present case, as is evident from the above discussion, the petitioner is neither the partner of M/s Alliance Polymer (India) which had issued the cheque through the partners and signed by accused No.3 and 4, nor is the petitioner signatory of the cheque, there is copy of partnership deed of the firm M/s Alliance Polymer (India) dated 03.04.2014 (Annexue P-4) placed on record suggesting that accused No.3 and 4 being the only partners of the firm and the name of the petitioner does not figure therein so, this being the position when the petitioner has no concern whatsoever with the cheque in question being neither signatory thereto nor even partner of M/s Alliance Polymer (India) drawer of the cheque, the summoning of the petitioner as accused to face offence under Section 138 of the Negotiable Instruments Act vide order dated 25.07.2016



is certainly without any basis and is nothing but abuse of process of law.

14. Resultantly the impugned order dated 25.07.2016 summoning the petitioner as accused for offence under Section 138 of the Negotiable Instrument Act on the basis of cheque (Annexure P-5) is not sustainable in the eyes of law. Therefore, the petition is allowed, and the impugned order dated 25.07.2016 (Annexure P-3), passed by learned Magistrate, First Class, Sohna, Gurgaon, summoning the petitioner and all other subsequent proceedings arising therefrom qua the petitioner are hereby set-aside.

15. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

**(SANJIV BERRY)**  
**JUDGE**

**19.05.2025**

*Gyan*

i)	Whether speaking/reasoned?	Yes
ii)	Whether reportable?	Yes